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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* MICHAEL WAYNE BROWN, JOSEPH HERBERT  
McINTYRE, MICHAEL A. PAOLINI, JAMES MARK  
WEAVER, and SCOTT LEE WINTERS

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Appeal 2008-2481  
Application 10/015,381<sup>1</sup>  
Technology Center 2600

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Decided:<sup>2</sup> February 23, 2009

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Before KENNETH W. HAIRSTON, ROBERT E. NAPPI, and MARC S. HOFF, *Administrative Patent Judges*.

HAIRSTON, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from a final rejection of claims 31 to 41.<sup>3</sup> We have jurisdiction under 35 U.S.C. § 6(b).

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<sup>1</sup> Application filed December 12, 2001. The real party in interest is International Business Machines Corporation.

<sup>2</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

We will sustain the rejections.

*The Invention*

Appellants' claimed invention is directed to a method, system, and computer program product "for specifying telephone services for a particular caller" after authenticating the identity of the caller (independent claims 31, 35, and 39; Spec. 4-6). Appellants' method for specifying telephone services includes retrieving a caller profile associated with the caller after authenticating the caller identity, and then specifying services from amongst plural available services according to the caller's profile (claim 31; Spec. 1, 4-6). Authentication can be performed by identifying a voice utterance (claims 32 and 36). The caller profile can be stored in an intermediary device database (claims 33, 37, and 40). Or, the caller profile can be stored in a systems management server (claims 34, 38, and 41).

Claim 31 is representative of the claims on appeal, and it reads as follows:

31. A method for specifying telephone services for a particular caller, comprising:

receiving, at an intermediary device, an authenticated caller identity for a call request from an origin device;

retrieving a caller profile for said authenticated caller identity; and

specifying a selection of services from among a plurality of services that are offered for said call request according to said caller profile.

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<sup>3</sup> Claims 1 to 30 and 42 to 47 stand withdrawn by the Examiner as being drawn to a non-elected invention.

*The Rejections*

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

|          |                    |  |
|----------|--------------------|--|
| Bouvier  | US 6,430,276 B1    | Aug. 6, 2002<br>(filed Oct. 19, 1999)              |
| Kawahara | US 2002/0184096 A1 | Dec. 5, 2002<br>(filed Sep. 28, 2001)              |
| Moser    | US 6,556,127 B1    | Apr. 29, 2003<br>(effectively filed Apr. 13, 1999) |
| Gurfein  | US 2003/0081744 A1 | May 1, 2003<br>(filed Aug. 28, 2002) <sup>4</sup>  |

The Examiner rejected claims 31, 33, 35, 37, 39, and 40 under 35 U.S.C. § 102(e) as being anticipated based upon the teachings of Bouvier.

The Examiner rejected claims 31, 35, and 39 under 35 U.S.C. § 102(e) as being anticipated based upon the teachings of Gurfein.

The Examiner rejected claims 32 and 36 under 35 U.S.C. § 103(a) based upon the teachings of Bouvier and Moser.

The Examiner rejected claims 34, 38, 41 under 35 U.S.C. § 103(a) based upon the teachings of Bouvier and Kawahara.

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<sup>4</sup> We note that although Appellants' application filing date of December 12, 2001, is prior to Gurfein's filing date of Aug. 28, 2002, Appellants have not asserted that Gurfein is *not* prior art, and the Examiner has not made a determination as to whether Gurfein meets the requirements for establishing entitlement to the benefit of the August 28, 2001, filing date of Gurfein's provisional application No. 60/315,041. *See* MPEP § 201.11.

Rather than repeat the arguments of Appellants or the Examiner, we refer to the Briefs<sup>5</sup> and the Answer<sup>6</sup> for their respective details. In this decision, we have considered only those arguments actually made by Appellants. Arguments which Appellants could have made but did not make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

## ISSUES

The Examiner states that Bouvier and Gurfein each teach every step of method claim 31, including the first step of “receiving ...” and the third step of “specifying ...” (Ans. 3-5 and 7-11; *see* representative claim 31).

With regard to the anticipation rejections, Appellants primarily contend that the applied references to Bouvier and Gurfein do not each expressly or inherently teach the method recited in claim 31 for specifying telephone services for a particular caller, including the steps of receiving an authenticated caller identity and specifying a selection of services according to a caller profile (App. Br. 6-18; Reply Br. 3-18). With regard to the obviousness rejections, Appellants primarily contend that both the base reference, Bouvier, and the respective secondary reference, Moser or Kawahara, fail to meet the “specifying ...” step of the claims (App. Br. 19-20 and 22).

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<sup>5</sup> We refer to the Appeal Brief filed September 1, 2006, and the Reply Brief filed May 16, 2006, throughout this opinion.

<sup>6</sup> We refer to the Examiner’s Answer mailed October 3, 2007, throughout this opinion.

Thus, the anticipation issues before us concern whether or not the applied references to Bouvier and Gurfein each describe a method for specifying telephone services for a particular caller as set forth in the claims on appeal. The obviousness issues before us concern whether or not the combinations of Bouvier and Moser (claims 32 and 36) and Bouvier and Kawahara (claims 34, 38, and 41) teach or suggest all of the limitations of the rejected claims.

#### FINDINGS OF FACT

The findings of fact throughout this decision are supported by a preponderance of the evidence of record.

##### Appellants' Disclosure

1. As indicated *supra*, Appellants describe and claim a method, system, and computer program product “for specifying telephone services for a particular caller” after authenticating the identity of the caller (independent claims 31, 35, and 39; Spec. 4-6; Abs.).
2. Appellants describe “authentication of a caller identity” as follows:

While in the present invention, authentication of a caller identity is described with emphasis placed on voice authentication, other methods of caller identity authentication may also be performed. Voice samples utilized for voice authentication are just one of multiple types of biometric sampling. For example, a caller may locally provide an eye scan, a fingerprint, and other biophysical identifiers that are transmitted within or outside the trusted network to authenticate the identity of the caller. *Alternatively, keypad entries, such as a pin code, account number, password, or other secure transaction key may be entered by a caller and utilized to authenticate the identity of the caller.*

Spec. 10:1-13 (emphasis added).

3. Appellants disclose that “telephony devices are termed *origin devices* when utilized for origination of a call to an intermediary device” (Spec. 11:5-7) (emphasis added).

Bouvier

4. Bouvier teaches a telecommunications method, system, and computer program product for specifying telephone services for a particular caller including using an authentication process to identify a user, and then specifying a selection of services for the authenticated user based on a user profile stored in a database (Abs.). Bouvier discloses in the Abstract:

A generic access service is provided in a telephone system to enable users to get dialup access to different network access services. *User profile data* showing which network access services a user subscribes to is held on a database accessible to the service control subsystem of the telephone system. Upon detection of a particular phone number assigned to the generic access service an authentication procedure is initiated in the service control subsystem to identify the user. Once identified, the service control subsystem uses the user profile data to determine what access services are available to that user. Thereafter, a particular access service is selected ....

Abstract, ll. 1-13 (emphasis added).

5. Bouvier teaches (see Figs. 1 and 2) a service control subsystem 15 (i.e., intermediary device) that receives an authenticated caller identity (i.e., a PIN code) for a call request from an origin device (i.e., an incoming call from standard telephones 10 through service switching points or exchanges 12 (see col. 1, ll. 36-45; col. 5, l. 51 to col. 6, l. 16). Bouvier teaches that user authentication can be done by looking up a user identity (PIN code or calling card number) through a lookup in a database 50 residing in the

intermediary device 15 (Fig. 2; col. 7, ll. 9-31). Once the user is authenticated, the system presents the user with a list of available services (*i.e.*, a specified selection of services available to that particular user) that can be selected by the user (col. 7, ll. 39-50).

6. Bouvier teaches another embodiment (Fig. 3) where the user profile is retrieved from a server 55 over the Internet 30 (col. 8, l. 64 to col. 9, l. 13).

7. Bouvier also teaches authenticating the user by using voice feedback (*i.e.*, voice utterances) (col. 11, ll. 27-30).

Gurfein

8. Gurfein teaches a telephone entertainment method, system, and computer program product for specifying telephone entertainment services for a particular caller including using an authentication process to identify a user, and then specifying a selection of services for the authenticated user based on a user profile stored in a database (Fig. 1; paras. 0065 and 0066).

9. Gurfein teaches a telephone entertainment system connected to a telephone network (*i.e.*, intermediary device) which receives a PIN number (*i.e.*, authenticated caller identity) for a call request from an origin device (*i.e.*, the call is inherently made from a user telephone), retrieves the caller's profile based on the authenticated caller identity, and specifies a selection of suggested telephone shows (*i.e.*, services) from among a plurality of possible telephone shows (*i.e.*, services) offered for the call request according to the caller's profile (paras. 0065 and 0066). Gurfein then allows the user to select a telephone show (para. 0066).

## ANTICIPATION

### *Principles of Law*

Analysis of whether a claim is patentable over the prior art under 35 U.S.C. § 102 begins with a determination of the scope of the claim. We determine the scope of the claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction in light of the specification as they would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004); *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

Anticipation is established when a single prior art reference discloses expressly or under the principles of inherency each and every limitation of the claimed invention. *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1347 (Fed. Cir. 1999); *In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994). “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. Inc. v. Union Oil Co. of Calif.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

### *Analysis*

We agree with the Examiner’s findings of fact and conclusions of law with respect to the anticipation rejections of claims 31, 33, 35, 37, 39, and 40 (in view of Bouvier; *see* Ans. 3-4 and 7-9), and claims 31, 35, and 39 (in view of Gurfein; *see* Ans. 5 and 9-11), and adopt them as our own, along with some amplification of the Examiner’s explanation of the teachings of Bouvier (*see* Findings of Fact 4 and 5) and Gurfein (*see* Findings of Fact 8 and 9). Appellants present substantive arguments concerning the rejection based on Bouvier only with respect to representative claim 31, and rely on

these arguments for the patentability of claims 33, 35, 37, 39, and 40 (App. Br. 6-12; Reply Br. 3-18). Appellants present substantive arguments concerning the rejection based on Gurfein only with respect to representative claim 31, and rely on these arguments for the patentability of claims 35 and 39 (App. Br. 12-18). We select claim 31 as representative of the respective groups of claims rejected over Bouvier and Gurfein, pursuant to our authority under 37 C.F.R. § 41.37(c)(1)(vii). We will address the two anticipation issues in turn below.

*Rejection of Claims 31, 33, 35, 37, 39, and 40 Over Bouvier*

Claim terms should be given their broadest reasonable meaning in their ordinary usage as such claim terms would be understood by one skilled in the art by way of definitions and the written description. *Morris*, 127 F.3d at 1054. In this case, the recitation in claim 31 of “an authenticated caller identity” broadly encompasses PIN codes or passwords as taught by Bouvier. Appellants recognize that PIN codes and passwords are types of authenticated caller identities (Finding of Fact 2). Claim 31 does not require an authentication step before the “receiving ...” step, and as such does not require handshaking, voice verification, or authentication to occur prior to the reception of the authenticated caller identity. Therefore, Bouvier’s reception of a PIN code or password at a service control subsystem meets the limitation of claim 31 of receiving an authenticated caller identity at an intermediary device. In addition, the term “services” is so broad as to include any type of telephone, network, or Internet service which can be provided through a communications system or network. This includes “access services” as taught by Bouvier (*see* Abs.; Finding of Fact 4).

Accordingly, Bouvier teaches the broadly recited “receiving …” and “specifying …” limitations of claim 31.

Because Bouvier teaches each and every limitation of claim 31, including the “receiving …” and “specifying …” steps (Findings of Fact 4 and 5), we are not convinced of any error in the Examiner’s rejection of representative claim 31 as being anticipated by Bouvier and we sustain this rejection. Appellants present no separate argument for the patentability of claims 33, 35, 37, 39, and 40 (*see* App. Br. 11-12; Reply Br. 18). We therefore sustain the Examiner’s rejection of claims 33, 35, 37, 39, and 40 as being anticipated by Bouvier, for the reasons expressed *supra* with respect to claim 31.

*Rejection of Claims 31, 35, and 39 Over Gurfein*

Because claim terms should be given their broadest reasonable meaning as such claim terms would be understood by one skilled in the art by way of definitions and the written description (*Morris*, 127 F.3d at 1054), the recitation in claim 31 of “an authenticated caller identity” broadly encompasses PIN codes as taught by Gurfein. Appellants recognize that PIN codes are a type of authenticated caller identity (Finding of Fact 2). Claim 31 does not require an authentication step before the “receiving …” step, and as such does not require handshaking, voice verification, or authentication to occur prior to the reception of the authenticated caller identity. Therefore, Gurfein’s reception of a PIN code at a telephone entertainment system meets the limitation of claim 31 of receiving an authenticated caller identity at an intermediary device. In addition, the term “services” is so broad as to include any type of telephone, network, or Internet service which can be provided through a communications system or

network. This includes “telephone shows” as taught by Gurfein (*see* Fig. 1 and paras. 0065 and 0066; Finding of Fact 9). Accordingly, Gurfein teaches the broadly recited “receiving ...” and “specifying ...” limitations of claim 31.

Because Gurfein teaches each and every limitation of claim 31, including the “receiving ...” and “specifying ...” steps (Findings of Fact 8 and 9), we are not convinced of any error in the Examiner’s rejection of representative claim 31 as being anticipated by Gurfein and we sustain this rejection. Appellants present no separate arguments for the patentability of claims 35 and 39 (*see* App. Br. 17-18). We therefore sustain the Examiner’s rejection of claims 35 and 39 as being anticipated by Gurfein, for the reasons expressed *supra* with respect to claim 31.

#### *Summary of Anticipation Issues*

We have considered all the arguments, including those in the Reply Brief, but find them unpersuasive. *Cf. Hartman v. Nicholson*, 483 F.3d 1311, 1315 (Fed. Cir. 2007) (all remaining arguments were considered, but none were found that warrant reversal). Appellants’ arguments based on the failure of Bouvier and/or Gurfein to enable claim 31 (App. Br. 10-12, 18; Reply Br. 11-18) (citing *In re Hoeksema*, 399 F.2d 269, 273 (CCPA 1968)), are unpersuasive in light of Appellants’ failure to meet their burden of submitting adequate evidence or affidavits to show non-enablement (*see Hoeksema*, 399 F.2d at 274-75) (stating that after the Examiner establishes a *prima facie* case, the burden shifts to Appellants of going forward with contrary evidence such as an affidavit).

In summary, all of the limitations of claims 31, 33, 35, 37, 39, and 40 are found in the teachings of Bouvier, and all of the limitations of claims 31,

35, and 39 are also found in the teachings of Gurfein. Appellants have not convincingly rebutted the Examiner's anticipation rejections or otherwise demonstrated error in the Examiner's findings and/or conclusions.

## OBVIOUSNESS

### *Principles of Law*

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 127 S. Ct. at 1734 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”)

The Examiner’s “articulated reasoning” in the rejection must possess a “rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). The Supreme Court, citing *Kahn*, 441 F.3d at 988, stated that “rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. at

1741. However, “the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *Id.*

The test for obviousness is what the combined teachings of the references would have suggested to the artisan. Accordingly, one can not show nonobviousness by attacking references individually where the rejection is based on a combination of references. *In re Keller*, 642 F.2d 413, 426 (CCPA 1981).

The Examiner bears the initial burden of presenting a prima facie case of obviousness, and Appellants have the burden of presenting a rebuttal to the prima facie case. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

#### *Analysis*

We agree with the Examiner’s findings of fact and conclusions of obviousness with respect to the rejections of claims 32 and 36 over Bouvier and Moser (Ans. 6 and 11-12), and claims 34, 38, and 41 over Bouvier and Kawahara (Ans. 6-7 and 12-13) and adopt them as our own, along with some amplification of the Examiner’s explanation of the teachings of Bouvier (*see* Findings of Fact 4-7).

Inasmuch as Appellants’ obviousness arguments point to Bouvier’s failure to teach the limitation of specifying a selection of services (App. Br. 19-20 and 22), these arguments are unpersuasive for the reasons given with respect to the anticipation rejection relying on Bouvier, *supra*. We agree with the Examiner that Bouvier teaches the “receiving ...” and “specifying ...” limitations of claims 31, 35, and 39 (Ans. 3-4 and 7-9) (*see* Findings of Fact 4 and 5). We will address the two obviousness rejections in turn below.

*Rejection of Claims 32 and 36 Over Bouvier and Moser*

The Examiner's prima facie case of obviousness with respect to claims 32 and 36 includes findings concerning the scope and content of the prior art (*i.e.*, Bouvier and Moser), explaining the differences in nomenclature between the claimed subject matter and the prior art, and discussing the level of skill in the art (Ans. 3-4, 6, and 11-12). *See Graham v. John Deere Co.*, 383 U.S. at 17-18; *see also KSR*, 127 S. Ct. at 1734. The Examiner's articulated reasoning in the rejection that it would have been obvious to one of ordinary skill in the art "to modify Bouvier to allow the authenticated caller identity being authenticated by a voice utterance of the caller as taught by Moser ... in order to provide the option of orally entering the subscriber identification" (Ans. 6), possesses a rational underpinning which supports the legal conclusion of obviousness. *Kahn*, 441 F.3d at 988. The fact that Bouvier teaches authenticating a user by using voice feedback (*i.e.*, voice utterances) (Finding of Fact 7), further buttresses the Examiner's conclusion that one of ordinary skill in the art would have found it obvious to authenticate using voice utterances as opposed to a PIN code. Furthermore, Appellants themselves recognize the desirability of utilizing different kinds of authentication such as PIN codes, passwords, and voice verification (Finding of Fact 2).

Appellants have not persuasively rebutted the Examiner's prima facie case of obviousness for claims 32 and 36, but merely contend that the additional reference to Moser fails to cure the previously-noted deficiencies of Bouvier (App. Br. 19-20), that the Examiner based the motivation to combine on a "naked assertion" (App. Br. 20; Reply Br. 19-21), and that

there is no reasonable expectation of success for the combination (App. Br. 21).

Appellants assert that *Moser* fails to teach all of the limitations of claim 31 (and therefore claims 32 and 36), including the “receiving ...” and “specifying ...” limitations (App. Br. 19-20). However, *Bouvier* teaches the “receiving ...” and “specifying ...” limitations (Findings of Fact 4 and 5), and was relied on by the Examiner as teaching these limitations as recited in independent claims 31 and 35 (Ans. 3-4 and 7-9). Appellants cannot show non-obviousness by attacking references individually (*i.e.*, *Moser*) where the rejection is based on a combination of references (*i.e.*, *Bouvier* and *Moser*). *Keller*, 642 F.2d at 426. In the instant case, Appellants’ arguments that *Moser* does not teach the “receiving ...” and “specifying ...” limitations are unpersuasive, since *Bouvier* was relied upon by the Examiner as teaching these limitations (*see* Ans. 3-4 and 7-9).

Appellants’ arguments have not persuaded us of error in the Examiner’s rejections of claims 32 and 36 under 35 U.S.C. § 103(a) as being unpatentable over *Bouvier* and *Moser*. Appellants’ arguments throughout the briefs do not convince us that there is no motivation to combine *Bouvier* and *Moser*, that the resulting combination has no reasonable expectation of success, or of any other error in the Examiner’s positions in the rejections (*see* App. Br. 18-21; Reply Br. 19-21). *See Oetiker*, 977 F.2d at 1445.

In our view, claims 32 and 36 would have been obvious to one of ordinary skill in the art at the time of Appellants’ invention in view of the teachings and suggestions of *Bouvier* and *Moser*. *See KSR*, 127 S. Ct. at 1734.

Rejection of Claims 34, 38, and 41 Over Bouvier and Kawahara

The Examiner's prima facie case of obviousness with respect to claims 34, 38, and 41 includes findings concerning the scope and content of the prior art (*i.e.*, Bouvier and Kawahara), explaining the differences in nomenclature between the claimed subject matter and the prior art, and discussing the level of skill in the art (Ans. 3-4, 6-7, and 12-13). *See Graham v. John Deere Co.*, 383 U.S. at 17-18; *see also KSR*, 127 S. Ct. at 1734. The Examiner's articulated reasoning in the rejection, that it would have been obvious to one of ordinary skill in the art "to modify Bouvier to allow retrieving the caller profile from the systems management server as taught by Kawahara ... in order to provide various services as desired by the caller" (Ans. 7), possesses a rational underpinning which supports the legal conclusion of obviousness. *Kahn*, 441 F.3d at 988. The fact that Bouvier teaches that a user profile can be retrieved from a remote server and database (*e.g.*, server 55 over the Internet 30 in Fig. 3) (Finding of Fact 6), further buttresses the Examiner's conclusion that one of ordinary skill in the art would have found it obvious to retrieve caller profiles from a remote server or systems management server.

Appellants have not persuasively rebutted the Examiner's prima facie case of obviousness for claims 34, 38, and 41, but merely contended that the additional reference to Kawahara fails to cure the previously-noted deficiencies of Bouvier (App. Br. 22), that the Examiner based the motivation to combine on a "naked assertion" (App. Br. 23; Reply Br. 23-24), and that there is no reasonable expectation of success for the combination (App. Br. 24).

Appellants assert that *Kawahara* fails to teach all of the limitations of claims 34, 38, and 41, including the “specifying ...” limitation (App. Br. 22). However, *Bouvier* teaches the “specifying ...” limitation (Findings of Fact 4 and 5), and was relied on by the Examiner as teaching this limitation as recited in independent claims 31, 35, and 39 (Ans. 3-4 and 7-9). Appellants cannot show non-obviousness by attacking references individually (*i.e.*, *Kawahara*) where the rejection is based on a combination of references (*i.e.*, *Bouvier* and *Kawahara*). *Keller*, 642 F.2d at 426. In the instant case, Appellants’ argument that *Kawahara* does not teach the “specifying ...” limitation is unpersuasive, since *Bouvier* was relied upon by the Examiner as teaching this limitation (*see* Ans. 3-4 and 7-9).

Appellants’ arguments have not persuaded us of error in the Examiner’s rejection of claims 34, 38, and 41 under 35 U.S.C. § 103(a) as being unpatentable over *Bouvier* and *Kawahara*. Appellants’ arguments throughout the briefs do not convince us that there is no motivation to combine *Bouvier* and *Kawahara*, that the resulting combination has no reasonable expectation of success, or of any other error in the Examiner’s positions in the rejections (*see* App. Br. 21-27; Reply Br. 21-24). *See Oetiker*, 977 F.2d at 1445.

In summary, claims 34, 38, and 41 would have been obvious to one of ordinary skill in the art at the time of Appellants’ invention in view of the teachings and suggestions of *Bouvier* and *Kawahara*. *See KSR*, 127 S. Ct. at 1734.

#### Summary of Obviousness Issues

For all of the above reasons, Appellants’ arguments have not persuaded us of error in the Examiner’s rejection of claims 32 and 36 under

35 U.S.C. § 103(a) as being unpatentable over Bouvier and Moser, or of error in the Examiner's rejection of claims 34, 38, and 41 under 35 U.S.C. § 103(a) as being unpatentable over Bouvier and Kawahara. Accordingly, we sustain the Examiner's obviousness rejections.

#### CONCLUSIONS OF LAW

Anticipation of the claimed subject matter set forth in claims 31, 33, 35, 37, 39, and 40 has been established by the Examiner because both Bouvier and Gurfein disclose, expressly or inherently, each and every limitation set forth in these claims. Obviousness of the claimed subject matter set forth in claims 32, 34, 36, 38, and 41 has been established by the Examiner. Appellants have not demonstrated any error in either the anticipation or obviousness rejections.

#### ORDER

The anticipation rejections of claims 31, 33, 35, 37, 39, and 40 are affirmed, and the obviousness rejections of claims 32, 34, 36, 38, and 41 are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

Appeal 2008-2481  
Application 10/015,381

tdl

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